

The Honorable Timothy W. Dore  
Chapter 7

Hearing Date: September 6, 2024

Hearing Location: U.S. Courthouse, Room 8106

Hearing Time: 9:30 AM

Response Date: August 30, 2024

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE:

KRISTINE BRECHT,  
  
Debtor.

NO. 24-10239-TWD

TRUSTEE'S REPLY IN SUPPORT OF  
MOTION FOR ORDER APPROVING  
SALE OF REAL PROPERTY FREE AND  
CLEAR OF LIENS

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1 I. INTRODUCTION

2 The Court should grant the Trustee's Motion for Order Approving Sale of Real  
3 Property Free and Clear of Liens (the "Motion"). The Debtor has not presented any evidence  
4 that the \$2,700,000 proposed purchase price does not reflect the market value of 1865 SW  
5 Miller Creek Road, Normandy Park, WA 98166 (the "Property"). In addition, the Debtor's  
6 contention that she is entitled to a homestead exemption in property she did not own at the time  
7 of the filing of the bankruptcy petition is contrary to law.

8 II. AUTHORITY & ARGUMENT

9 A. The Debtor has not presented any evidence that \$2,700,000 does not reflect the market  
10 value of the property.

11 Although footnote 1 of the Debtor's Response to Motion to Sell Property Free and  
12 Clear of Liens provides "the Debtor does not officially object" to the Trustee's motion, the  
13 Debtor contends the sale price is lower than the appraisals or market price. However, the  
14 Debtor has failed to present *any* appraisals or admissible evidence concerning the fair market  
15 value of the Property, and instead simply argues, without supporting evidence, that the sales  
16 price is not what she thinks it should be.

17 The unique attributes of the Property were taken into account, as set forth in chapter  
18 and verse in Paragraphs 4 to 8 of the supporting declaration of Kailee Rainey (Dkt. No. 82).  
19 And at the end of the day, the market is the best indicator of the value of real property. The  
20 Property was listed at the best time (the spring), and was on the market for four (4) months  
21 before the \$2,700,000 offer was accepted. As set forth in the supporting declaration of Ms.  
22 Rainey at Dkt. No. 82, the market was tested and has spoken:

23 10. The Trustee agreed to start with a high price because out of the desire to  
24 account for the possibility of a buyer in that price range looking for such a  
25 unique property. We did not want any of the interested parties (Debtor or  
creditor) to feel like the Trustee had underpriced it. No doubt, if we had priced  
at \$3 million, and gotten an immediate offer, they would have filed it was  
underpriced. The price drops made by the Trustee were all at benchmark  
numbers, in hopes of opening the potential buyer market to those who had

1 capped their search at \$5M, \$4M, and \$3.5M. On April 9<sup>th</sup>, we dropped the  
2 price to \$4,985,000. On May 10<sup>th</sup> we dropped the price to \$3,950,000 (this was  
3 out biggest “rush” of showings with multiple new potential buyers in a 7-day  
4 period). On June 27<sup>th</sup> 23 dropped the price to \$3,495,000. On July 24<sup>th</sup>, the  
5 Trustee accepted the offer from the Talwars at \$2,700,000.

6 11. Including the buyers who are under contract, we have had a total of 5  
7 buyers who considered putting in an offer and made multiple visits and/or  
8 inquiries for information on the Property. Even after the acceptance of the  
9 current offer at \$2.7 million, none of the previously interested buyers have come  
10 forward to offer a competing bid, which per the contract need only be 1% higher  
11 than the current offer.

12 The Debtor’s unsupported contentions concerning the Property’s value do not outweigh  
13 the evidence provided in support of the sale motion. The Court should authorize the Trustee to  
14 proceed with the sale to the Talwars.

15 B. The Debtor does not have a homestead exemption in the Property because she did not  
16 own the Property at the time of the bankruptcy filing.

17 RCW 6.13.010 provides, in relevant part, that “The homestead consists of real or  
18 personal property that *the owner or a dependent of the owner* uses as a residence.” RCW  
19 6.13.010(1) (emphasis added). It is undisputed that at the time the bankruptcy petition was  
20 filed, the Property was owned by Beach Rejuvenation, LLC, and not the Debtor. *See* Dkt No.  
21 37 (Stipulation Regarding Avoidance of Transfer of Normandy Park Property) and Dkt. No. 39  
22 (Agreed Order).

23 The “snapshot rule” mandates that Court sustain the Trustee’s objection to the Debtor’s  
24 homestead, precisely because the Debtor did not, at the time of the bankruptcy filing, own the  
25 Property. *In re Anderson*, 613 B.R. 279 (9<sup>th</sup> Cir. BAP 2020) is inapposite because in  
26 *Anderson*, it was undisputed that the debtor had an ownership interest in the subject property:

27 On her schedules, Debtor listed a 15 percent interest in real property . . . (the  
28 “Property”), which she co-owns with her parents.

29 *In re Anderson*, 613 B.R. 279, 280 (9<sup>th</sup> Cir. BAP 2020).<sup>1</sup>

30 <sup>1</sup> *See also* Declaration of Michael P. Klein in Support of Reply in Support of Motion for Order Approving Sale of  
31 Real Property Free and Clear of Liens, ¶ 2.

1           Instead, the issues before the BAP in *Anderson* were whether: “. . . (1) [the Debtor]  
2           lacked the intent to reside [at the subject property], and (2) under Washington law [the Debtor]  
3           had abandoned the property and was thus no longer entitled to claim the homestead  
4           exemption.” *In re Anderson*, at 613 B.R. 280.

5           Unlike in *Anderson*, Debtor Brecht was not a homeowner at the time the bankruptcy  
6           petition was filed. It is not even clear she was the sole owner of Beach Rejuvenation, LLC,  
7           given David Blake Gibbons appears to have been the Managing Member of the LLC. But even  
8           if Debtor Brecht owned 100% of Beach Rejuvenation, LLC, it still does not mean she is  
9           entitled to a homestead exemption.

10           It is axiomatic that in Washington, a member of an LLC does not have an interest in  
11           property owned by the LLC; instead the LLC member has a personal property interest in the  
12           LLC. “A member *has no interest* in specific limited liability company property.” RCW  
13           25.15.246(1) (emphasis added). Accordingly, under Washington law, even if Debtor Brecht  
14           owned 100% of Beach Rejuvenation, LLC at the time of the bankruptcy filing, she did not have  
15           an interest in the Property. Beach Rejuvenation, LLC did.

16           In 2015, the Washington State Court of Appeals similarly held that shareholders of a  
17           corporation could not claim a homestead exemption in real property owned by the corporation:

18           Our Supreme Court has held that a corporation's shareholders have no property  
19           interest in that corporation's physical assets because corporations are separate  
20           organizations with different privileges and liabilities from shareholders.  
21           *Christensen v. Skagit County*, 66 Wash.2d 95, 97, 401 P.2d 335 (1965).  
22           Moreover, living on a property, standing alone, does not create a legal or  
23           equitable interest in the property sufficient to claim a homestead. *See SSG Corp.*  
24           *v. Cunningham*, 74 Wash.App. 708, 714, 875 P.2d 16 (1994).

25           Here, the trial court quieted title to the 89th Street Property in Unique, and the  
          Rehes did not challenge this determination. The Rehes lost any interest in the  
          land and money they contributed to Unique when they contributed it. *See*  
          *Christensen*, 66 Wash.2d at 97, 401 P.2d 335. The mere fact they live on the  
          property does not give them a legal or equitable interest in the property to claim  
          a homestead exemption. *See SSG Corp.*, 74 Wash.App. at 714, 875 P.2d 16.

1 *Northwest Cascade, Inc. v. Unique Const., Inc.*, 187 Wash. App. 685, 702, 351 P.3d 172  
2 (2015). Accordingly, even if Debtor Brecht owned 100% of Beach Rejuvenation, LLC at the  
3 time of the bankruptcy filing (which is in question given Mr. Blake Gibbons was the Managing  
4 Member of the LLC), she was not the owner of the Property, and thus is precluded from  
5 claiming a homestead exemption.

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court should grant the Trustee's Motion for Order  
8 Approving Sale of Real Property Free and Clear of Liens.

9  
10 DATED this 3<sup>rd</sup> day of September, 2024.

11 /s/ Manish Borde

12 Manish Borde, WSBA #39503

13 BORDE LAW PLLC

14 1700 7<sup>th</sup> Ave., Suite 2100

15 Seattle, WA 98101

16 Telephone: (206) 531-2722

17 mborde@bordelaw.com

18 ***Attorney for Trustee***

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DATED this 3<sup>rd</sup> day of September, 2024.

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**BORDE LAW PLLC**  
1700 7<sup>th</sup> Ave., Suite 2100  
Seattle, Washington 98101  
(206) 531-2722